

WASHINGTON, DC—On May 7, 2009, Congressman Joe Sestak (PA-07) voted for H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act of 2009, which the House passed by a vote of 300 to 114. The measure is aimed at curbing “predatory” lending – a major factor in the nation’s highest home foreclosure rate in 25 years. The bill would outlaw many of the industry practices that have contributed to the subprime lending boom, and it would prevent borrowers from deliberately misstating their income to qualify for a loan. The bill would ensure that mortgage lenders make loans that benefit the consumer and prohibit them from steering borrowers into higher-cost loans. It would establish a simple standard for all home loans: institutions must ensure that borrowers can repay the loans they are sold. For mortgage refinancing, the bill requires that all loans provide a net tangible benefit to the consumer. Also, for the first time ever, it would make the secondary mortgage market responsible for complying with these standards when they buy loans and turn them into securities.

“These are commonsense measures to protect consumers and lenders alike,” said Congressman Sestak. “As we have seen, when practices endanger the stability of the market, everyone suffers. This measure will help correct the mortgage loan practices that have played a major role in the current financial crisis, while also preventing borrowers from deliberately misstating their income to qualify for a loan. By acting transparently and in good faith, we can work together to overcome these economic challenges and lay the foundation for the long-term stability that is the cornerstone of prosperity.”

Key Points:

This bipartisan bill will make sure that the mortgage industry follows basic principles of sound lending, responsibility, and consumer protection, ensuring that:

- borrowers can repay the loans they are sold;
- mortgage lenders make loans that benefit the consumer and prohibit them from steering borrowers into higher cost loans;
- all mortgage refinancing provides a net tangible benefit to the consumer;
- the secondary mortgage market, for the first time ever, is responsible for complying with these common sense standards when they buy loans and turn them into securities;
- there are incentives for the mortgage market to move back toward making safe, fully documented loans; and
- tenants renting homes that are foreclosed would receive notification and time to relocate.

H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act of 2009

Requires lenders to ensure a borrower's ability to repay. The bill establishes a simple federal standard for all home loans: institutions must ensure that borrowers can repay the loans they are sold. Lenders would have to determine that a borrower has a "reasonable ability to repay," based on income, credit history, indebtedness and other factors. For refinancing, the bill will require that all loans provide a net tangible benefit to the consumer, barring "junk" lending driven by fees rather than solid economics. Some lending had gotten away from these commonsense basics during the real estate boom, giving rise to risky, exotic mortgages and practices such as "no documentation" loans.

Prohibits unfair lending practices. The bill prohibits the financial incentives for subprime loans that encourage lenders to steer borrowers into more costly loans, including the bonuses known as "yield spread premiums" that lenders pay to brokers to inflate the cost of loans. Many homeowners in the current mortgage crisis received were steered into more expensive loans than they qualified for. The bill limits the prepayment penalties charged to borrowers who wish to get out of their loans and refinance on more affordable terms.

Brings accountability to the secondary market for home loans. Under the bill, participants in the huge secondary mortgage market would for the first time be liable under federal law for ensuring responsible lending. The bill permits consumers to obtain redress directly from firms involved in "securitizing" mortgages, unless the securitizer provided the borrower with a loan that meets the basic ability to repay and net tangible benefit standards. In recent years, home loans increasingly were sliced and diced by firms that bundle and resell mortgages to investors, making it difficult to track who was ultimately responsible for ensuring the soundness of loans.

Holds Creditors Responsible for the Loans they Originate. To fully encourage responsible underwriting, the bill mandates strong new federal rules to require creditors to retain an economic interest in a material portion (at least 5 percent) of the credit risk of each loan that the creditor transfers, sells, or conveys to a third party. Federal banking agencies would have the authority to make exceptions to the bill's risk retention provisions, including form and amount.

Imposes Penalties for Irresponsible Lending. Under the measure, lenders and the secondary mortgage market who don't comply with these standards (ability to pay and net tangible benefit) would be held accountable by consumers for rescission of the loan and the consumer's costs for rescission, including attorney's fees. They would also have the option to rework a loan to conform to the bill's standards within 90 days of receiving notice from the consumer.

Stronger consumer protections for high-cost mortgages. The bill expands the protections available under federal rules on high-cost loans -- lowering the interest rate and the points and fee triggers that define high cost loans. The bill further enhances consumer protections for "high-cost loans" by:

- prohibiting practices that increase the risk of foreclosure, such as balloon payments, encouraging a borrower to default, and call provisions,
- prohibiting excessive fees for payoff information, modifications, or late payments,
- prohibiting the financing of points and fees, and
- requiring more pre-loan counseling.

Requires additional disclosures for consumers regarding mortgage loans. Under the bill, the lender must disclose the maximum a consumer could pay on a variable rate mortgage, with a warning that payments will vary based on interest rate changes. Lenders must also disclose the total amount of settlement charges, the amount of charges included in the mortgage, the amount the consumer must pay at closing, and the fees paid to a mortgage originator. Many homebuyers did not understand the terms of their mortgages, especially when taking out subprime loans, and these disclosures will give consumers the information they need to make educated choices.

Protects Tenants who Rent Homes that go into Foreclosure. Renters can also be affected if the homes that they rent go into foreclosure. This legislation will provide protections for renters so that they receive proper notification and are given time to relocate -- 90 days if the unit will be used as a primary residence.

Creates the Office of Housing Counseling. The bill establishes an Office of Housing Counseling within HUD to boost homeownership and rental housing counseling. The Office will spearhead and coordinate other efforts to broaden the reach of homeownership counseling. Also requires the launch of a national public service, multimedia campaign to promote financial counseling on homeownership and the establishment of a website and toll-free hotline.

Legal Assistance to Homeowners and Tenants Facing Foreclosure. The measure requires HUD to provide competitive grants for a full range of legal assistance to low- and moderate-income homeowners and tenants facing foreclosure related to home ownership preservation, home foreclosure prevention, and tenancy. Priority consideration would be given to the top 100 areas for home foreclosures. Recipients would be prohibited from using the money for any class action lawsuits.

Born and raised in Delaware County, former 3-star Admiral Joe Sestak served in the Navy for 31 years and now serves as the Representative from the 7th District of Pennsylvania. He led a series of operational commands at sea, including Commander of an aircraft carrier battle group of 30 U.S. and allied ships with over 15,000 sailors and 100 aircraft that conducted operations in Afghanistan and Iraq. After 9/11, Joe was the first Director of "Deep Blue," the Navy's anti-terrorism unit that established strategic and operations policies for the "Global War on Terrorism." He served as President Clinton's Director for Defense Policy at the National Security Council in the White House, and holds a Ph.D. in Political Economy and Government from Harvard University. According to the office of the House Historian, Joe is the highest-ranking former military officer ever elected to the U.S. Congress.

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